

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BRANDON ASSOCIATES, LLC,
Plaintiff,

v.

FAILSAFE AIR SAFETY SYSTEMS CORP.,
Defendant.

Civil Action No. 04-12013 NMG

JOINT STATEMENT UNDER LOCAL RULE 16.1

Pursuant to Local Rule 16.1, the parties submit this Joint Statement:

Counsel for the parties conferred as provided in Local Rule 16.1(B) on November 17, 2004. The proposed agenda for the Scheduling Conference on December 9, 2004 (attached hereto as **Attachment A**) is a product of that conference.

The parties further agreed that they do not consent to a trial by magistrate judge.

The parties have agreed on and drafted a proposed pretrial schedule and discovery plan (attached hereto as **Attachment B**).

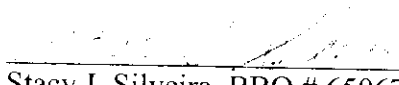
At this stage, both parties believe that the number and type of discovery events set forth in the Local Rule 26.1(C) are not adequate to allow full discovery of all relevant information, and, as such, propose that the number of depositions allowed each party under Local Rule 26.1(C) be extended to twenty (20) depositions.

The parties' Local Rule 16.1(D)(3) Certifications are attached hereto as **Attachments C and D**.


As a courtesy to the Court, the parties have also included a list of all pending motions, attached hereto as **Attachment E**.

BRANDON ASSOCIATES, LLC
By its attorney,

FAILSAFE AIR SAFETY SYSTEMS CORP.
By its attorney,



Stacy J. Silveira, BBO # 650675
BRANDON ASSOCIATES, LLC
160 Commonwealth Avenue
Boston, MA 02116
(617) 695-8949

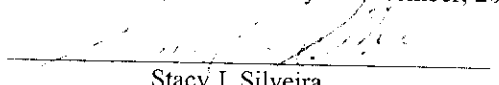


Laurie M. Ruskin, Of Counsel, BBO# 630374
SWEDER & ROSS LLP
21 Custom House Street, Suite 300
Boston, MA 02110
(617) 646-4466

Dated: December 3, 2004

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the above document to be served upon the attorney of record for each of the other parties in this action by hand or U.S. mail, this 3rd day of December, 2004.



Stacy J. Silveira

Attachment A

Matters to be Discussed at Scheduling Conference

1. All pending motions.
2. A schedule for responsive pleadings, if necessary.
3. Protective Order.
4. Settlement Offers.

Attachment B**Proposed Pretrial Schedule and Discovery Plan**

The parties have agreed to propose that all discovery be stayed until such time as the Court is able to rule on all currently pending motions – and any motions to dismiss, should any be filed.

Factual discovery cut-off date:	9 months after initial disclosures
Date for amending the pleadings and adding parties: ¹	3 months after initial disclosures
Date for filing dispositive motions	3 months after factual discovery cut off date
Identification of Experts and exchange of Expert reports	4 months after factual discovery cut off date [expert discovery, if necessary, to be determined]
Final Pretrial Conference	At the earliest convenience of the Court after the filing of dispositive motions
Trial	At the earliest convenience of the Court after the final pre-trial conference

¹ By agreeing to this deadline, neither party waives its right to (a) seek leave of Court pursuant to Fed. R. Civ. P. 16(B) and 15(A) to amend the pleadings based on information obtained during discovery, or (b) to oppose any motion filed before or after this date on any basis whatsoever.

Attachment C

Local Rule 16.1(D)(3) Certification of Plaintiff

Attachment D

Local Rule 16.1(D)(3) Certification of Defendant

Attachment E

List of Pending Motions

- Plaintiff: *Motion To Amend The Verified Complaint And Action To Reach And Apply* (September 24, 2004).²
 - Defendant: *Motion To Strike And For Sanctions* (October 5, 2004).
 - Plaintiff: *Plaintiff's Response To Defendant's Motion To Strike And For Sanctions* (October 18, 2004).
 - Defendant: *Reply To Plaintiff's Response To Defendant's Motion To Strike And For Sanctions* (October 29, 2004).
- Plaintiff: *Motion For Pro Hac Vice Appearance* (September 23, 2004).
- Plaintiff: *Motion To Redact The Amended Verified Complaint* (October 4, 2004).
 - Defendant: *Defendant's Response To Motion To Redact The Amended Verified Complaint* (October 12, 2004).
- Defendant: *Request For Default* (October 28, 2004).
- Plaintiff: *Motion For Leave to Reply To Counterclaims* (October 29, 2004).
 - Defendant: *Opposition To Plaintiff's Motion For Leave To Reply To Counterclaims* (November 12, 2004).

² There is a dispute between the parties as to whether Plaintiff amended its original Complaint as a matter of right or whether it moved the Court to allow such an amendment: Plaintiff considers the original Complaint to have been amended, while the Defendant considers the question of whether the Complaint has been amended to be still pending. Plaintiff's Complaint was filed September 8, 2004 (in Superior Court of Massachusetts). Action was removed to this Court on September 17, 2004 (diversity). Defendant's Answer and Counterclaim was filed on September 30, 2004.

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DISTRICT OF MASSACHUSETTS

BRANDON ASSOCIATES, LLC,
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v.

FAILSAFE AIR SAFETY SYSTEMS CORP.,
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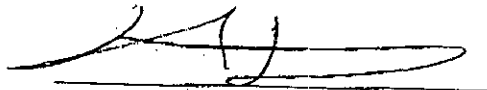
Civil Action No. 04-12013 NMG

DEFENDANT'S RULE 16.1(D)(3) CERTIFICATION

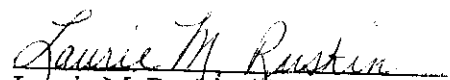
Pursuant to Local Rule 16.1(D)(3), we hereby affirm that we have conferred:

- (a) with a view to establishing a budget for the costs of conducting the full course and various alternative courses – of the above-entitled litigation; and
- (b) to consider the resolution of the litigation through the use of alternative dispute resolution programs such as those outlined in Local Rule 16.4.

December 1, 2004


Paul Chirayath
President & CEO,
Failsafe Air Safety Systems Corp.

December 3, 2004

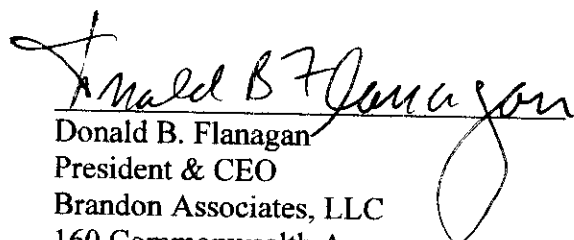

Laurie M. Ruskin, Esq.
Counsel for
Failsafe Air Safety Systems Corp.

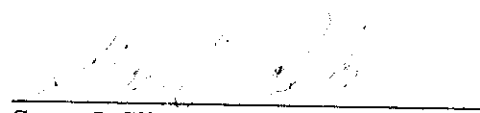
Re: *Brandon Associates, LLC v. Failsafe Air Safety Systems Corp.*
U.S. District Court of Massachusetts, Case No. 04 1203 NMG

PLAINTIFF'S RULE 16.1(d)(3) CERTIFICATION

In accordance with Local Rule 16.1, this statement hereby certifies that Stacy J. Silveira, Esq., Counsel for Plaintiff Brandon Associates, LLC and Donald B. Flanagan, President & CEO of Brandon Associates, LLC have conferred as follows:

- (a) with a view to establishing a budget for the costs of conducting the full course—
and various alternative courses—of the litigation; and
- (b) regarding the resolution of the litigation through the use of alternative dispute
resolution programs such as those outlined in Local Rule 16.4.


Donald B. Flanagan
President & CEO
Brandon Associates, LLC
160 Commonwealth Avenue
Boston, MA 02116


Stacy J. Silveira, BBO # 650675
General Counsel
Brandon Associates, LLC
160 Commonwealth Avenue
Boston, MA 02116